United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 15-1040**
	)	**Issued: July 28, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS AFFAIRS MEDICAL CENTER, Louisville, KY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 13, 2015 appellant, through counsel, filed a timely appeal from a March 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury on April 4, 2014 in the performance of duty.

FACTUAL HISTORY

On April 9, 2014 appellant, then a 37-year-old mental health associate, filed a traumatic injury claim alleging that on April 4, 2014 she injured her back, hip, and hand when she fell on a

[1] 5 U.S.C. § 8101 *et seq.*

wet floor. She stopped work on April 5, 2014. The employing establishment controverted the claim based on insufficient medical evidence.

By letter dated April 14, 2014, OWCP requested that appellant submit additional factual and medical information, including a detailed report from her attending physician addressing the causal relationship between any diagnosed condition and the identified work incident. It further advised her that under FECA a chiropractor was considered a physician only if he or she diagnosed a spinal subluxation by x-ray.

In response, appellant submitted reports from Dr. Harold Byers, Jr., a chiropractor, dated from April to May 2014. X-rays obtained on April 8, 2014 showed dextroscoliosis and bilateral osteitis condensans illi. Dr. Byers provided chiropractic treatment, but did not diagnose a subluxation.

The record contains an authorization for examination and/or treatment (Form CA-16) signed on April 10, 2014 by the employing establishment. It authorized appellant to obtain treatment by Dr. Byers for a sore back, hand, and hip.

In an undated form report, Dr. Byers diagnosed cervical sprain, thoracic sprain, and lumbar sprain. He checked "yes" that the condition was caused or aggravated by the described work activity of a slip and fall on a wet floor. Dr. Byers found that appellant was totally disabled beginning April 8, 2014.

On April 24, 2014 appellant described her fall and related that her supervisor instructed her to go to the health unit. She experienced pain in her hand, hip, and back that increased over time.

On May 16, 2014 appellant returned to work with restrictions.

By decision dated May 20, 2014, OWCP denied appellant's claim as she did not submit medical evidence containing a medical diagnosis. It noted that the chiropractor did not diagnose a subluxation of the spine and thus his reports were insufficient to meet her burden of proof.

On June 6, 2014 appellant requested an oral hearing before an OWCP hearing representative. On July 10, 2014 counsel requested a telephone hearing in lieu of an oral hearing.

In a report dated June 20, 2014, Dr. Jeffrey S. Stephenson, who specializes in sports medicine, evaluated appellant for back and right hip pain. He obtained a history of her slipping on a wet work floor two months earlier, falling on her right wrist and hitting her back. Dr. Stephenson diagnosed right wrist sprain and strain, lumbar strain, greater trochanteric right hip bursitis, right hip pain, and right wrist pain. He instructed appellant to wear a wrist brace.

On July 14, 2014 Dr. Stephenson diagnosed lumbar sprain, chronic right wrist pain, and right scapholunate instability. He recommended that appellant continue to use a wrist brace for work and attend physical therapy.

In a report dated August 22, 2014, Dr. Stephenson related that at the time of his initial evaluation on June 20, 2014 appellant described an April 4, 2014 injury at work after slipping on

a wet floor. He noted that she believed that she fell on her right wrist and struck her back on a wall. Dr. Stephenson diagnosed greater trochanteric bursitis of the right hip that "occurred after her fall." He advised that appellant's right wrist had not improved and that a magnetic resonance imaging (MRI) scan study showed "a sprain of the radial styloid attachment of [the] volar extrinsic capsular ligaments including the radioscaphocapitate ligament and the long radiolunate ligament." Dr. Stephenson indicated that she was scheduled to have arthroscopic surgery on her wrist. He stated, "With [appellant's] reported pain in this wrist starting after her fall, I believe the injury to be directly associated with her fall at work."

At the telephone hearing, held on January 6, 2015, appellant related that she selected Dr. Byers to treat her injury because of his location. She underwent right wrist surgery on September 23, 2014 and returned to work on December 31, 2014.

By letter dated January 28, 2015, the employing establishment related that it did not dispute the occurrence of the incident, but maintained that the medical evidence was insufficient to show that appellant sustained greater trochanteric bursitis of the right hip or a sprain of the radial styloid attachment of the volar extrinsic capsular ligaments as a result of the fall.

In a decision dated March 23, 2015, an OWCP hearing representative affirmed the May 20, 2014 decision as modified to show that appellant had submitted medical evidence establishing that she had a diagnosed condition, but failed to establish that it resulted from the April 4, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[6] An employee may establish that the employment

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[4] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[7]

Section 8101(2) of FECA provides that the "term 'physician' includes chiropractors only to the extent that their reimbursable services are limited "to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist…."[8] A chiropractor cannot be considered a physician under FECA unless it is established that there is a subluxation as demonstrated by x-ray evidence.[9]

Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.[10]

ANALYSIS

Appellant alleged that she sustained an injury to her back, hand, and hip on April 4, 2014 when she slipped and fell on a wet floor. She has established that the April 4, 2014 incident occurred at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has not met her burden of proof to establish that the April 4, 2014 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[11]

Appellant submitted numerous treatment notes and undated form reports from Dr. Byers, a chiropractor. Dr. Byers diagnosed cervical, thoracic, and lumbar strain/strain. As discussed, however, section 8101(2) of FECA provides that the term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[12] A chiropractor cannot be considered a physician under FECA unless it is established that there is a subluxation as shown by x-ray evidence.[13] Dr. Byers did not diagnose a subluxation and thus his reports are not those of a physician.

On June 20, 2014 Dr. Stephenson discussed appellant's history of slipping and falling on a wet floor two months earlier at work, landing on her wrist and striking her back. He discussed

[7] *Id.*

[8] 5 U.S.C. § 8101(2); *see also Michelle Salazar*, 54 ECAB 523 (2003).

[9] *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[10] *See Tracey P. Spillane*, 54 ECAB 608 (2003).

[11] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[12] 5 U.S.C. § 8101(2); *see also I.C.*, Docket No. 14-1927 (issued February 13, 2015).

[13] 20 C.F.R. § 10.5(bb); *see supra* note 9.

her complaints of pain in her right hip and back. Dr. Stephenson diagnosed right wrist sprain and strain, lumbar strain, greater trochanteric right hip bursitis, right hip pain, and right wrist pain. On July 14, 2014 he diagnosed lumbar sprain, chronic right wrist pain, and right scapholunate instability. In these reports, however, Dr. Stephenson did not specifically address the cause of the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[14]

In a report dated August 22, 2014, Dr. Stephenson obtained a history of appellant sustaining an injury at work in April 2014 when she slipped and fell on a wet floor. He noted that after her fall she experienced greater trochanteric bursitis of the right hip. Dr. Stephenson reviewed an MRI scan study of the right wrist which revealed a sprain of the "radial styloid attachment of [the] volar extrinsic capsular ligaments including the radioscaphocapitate ligament and the long radiolunate ligament." He noted that appellant was scheduled for right wrist surgery. Dr. Stephenson attributed appellant's right hip bursitis and wrist injury to her fall at work because she began experiencing pain subsequent to the fall. A medical opinion, however, that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[15] Dr. Stephenson did not explain the mechanism by which the fall at work resulted in the diagnosed conditions. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[16]

The Board notes that the employing establishment issued appellant a Form CA-16 on April 10, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[17] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[18]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

[14] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *A.D.*, 58 ECAB 149 (2006).

[15] *E.B.*, Docket No. 15-631 (issued May 18, 2015); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[16] *See R.C.*, Docket No. 15-315 (issued May 4, 2015); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[17] *See D.M.*, Docket No. 13-535 (issued June 6, 2013); *see also* 20 C.F.R. §§ 10.300, 10.304.

[18] *See* 20 C.F.R. § 10.300(c). In this case, the employer checked box 6B of the form to indicate that there was doubt that the injury occurred or that it is work related. Section 10.302 provides that, under those circumstances, if the "medical and factual evidence sent to OWCP shows that the condition is not work related, OWCP will notify the employee, the employer, and the physician or hospital that OWCP will not authorize payment for any further treatment."

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on April 4, 2014 in the performance of duty. Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed, and the case shall be returned to OWCP to address medical costs associated with the authorization provided by a Form CA-16.

Issued: July 28, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board